

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

In re: RUDOLPH LUNDY, JR.
REBECCA LUNDY,

CASE NO. 12-74043-FJS

Debtors

CHAPTER 13

VIRGINIA HOUSING DEVELOPMENT AUTHORITY,

Movant,

vs.

RUDOLPH LUNDY, JR.,
and
REBECCA LUNDY,
and
MICHAEL P. COTTER, TRUSTEE,

Respondents

**ORDER RESOLVING VIRGINIA HOUSING DEVELOPMENT AUTHORITY'S
MOTION FOR RELIEF FROM STAY**

THIS MATTER came to be heard this day upon the motion of Movant, VIRGINIA HOUSING DEVELOPMENT AUTHORITY, by counsel, to amend the automatic stay, with the Motion and Notice of Preliminary Hearing having been served on Debtors, counsel for Debtors and the Trustee, and upon representation of counsel for Movant and counsel for Debtors that the parties have reached a settlement of the motion, and was argued by counsel; and

**Julian A. Bryant, Jr. (VSB #1168)
EVANS & BRYANT, PLC
Counsel for Movant
2101 Parks Avenue, Suite 301
Virginia Beach, Virginia 23451
757-437-9500**

IT APPEARING to the Court and the Court finds from the representations of counsel for Movant and counsel for Debtors that Debtors are delinquent under the terms of the deed of trust held by Movant encumbering the real property hereinafter described for the post-petition mortgage loan payments for the months of January through May 2013, in the sum of \$8,292.45, including Movant's fees and costs for this proceeding; that cause exists to terminate the automatic stay; but that Debtors propose (2) to pay directly to Movant the sum of \$2,986.58 on or before May 30, 2013, and (2) to file within 15 days of the entry of this order a modified Chapter 13 plan which will provide for payment in full within a reasonable time of the remaining post-petition arrearages of \$5,305.87 together with existing pre-petition arrearages, if any, and to resume paying their regular post-petition monthly loan payments with the payment due June 1, 2013; that the parties are willing to resolve this Motion as hereinafter provided, understanding, however, that nothing in this Order shall preclude the Chapter 13 Trustee or other creditors from filing objections to the modified plan, if they deem it appropriate to do so; and that through Debtors' counsel, Debtors have received notice of the agreement and that the parties are willing to resolve this proceeding as hereinafter provided.

UPON CONSIDERATION WHEREOF, it is **ORDERED** that:

1. Commencing with the payment due June 1, 2013, Debtors shall timely make and pay to Movant, its successors and assigns, all of the regular monthly post-petition mortgage payments when and as they become due under the terms of the Deed of Trust Note and Deed of Trust;
2. In addition, on or before May 30, 2013, Debtors shall pay directly to Movant the sum of \$2,986.58 for application to existing post-petition mortgage loan arrearages; and

3. Lastly, to cure the remaining mortgage loan delinquencies, Debtors shall promptly file, within 15 days of the entry of this order, a modified Chapter 13 plan which will provide for payment in full within a reasonable period of time of the existing post-petition arrearages of \$5,305.87 as well as the existing pre-petition arrearages, if any, due to Movant; and Movant shall amend its original Proof of Claim to incorporate the delinquent post-petition arrearages that are to be paid by the Trustee under Debtors' modified Chapter 13 plan.

3. Should Debtors fail to make the payments required under this Order when and as they are due, or fail to file a modified plan within the required timeframe, or should the modified plan not be confirmed, then relief from the automatic stay of 11 U.S.C. § 362 is, by this Order, automatically granted to Movant without further order of the Court so as to allow Movant to proceed under state law to enforce the lien of its Deed of Trust as set out in its Motion pertaining to the following-described property:

All that certain lots, pieces or parcels of land, with the buildings and improvements thereon, now numbered 730 East Twenty-Eight (28th) Street, lying and being in the City of Norfolk, Virginia, known, numbered and designated as parts of Lots 1 and 2, in Block 13, on the plat of "Villa Heights", recorded in the Clerk's Office of the Circuit Court of the City of Norfolk, Virginia, in Map Book 4, at Pages 22 and 23, said property being more particularly bounded and described as follows: Beginning at the Northeast Intersection of 28th Street and Fawn Street and thence running Eastwardly on 28th Street, 37.5 feet; thence running Northwardly parallel with Fawn Street, 100 feet; thence running Westwardly parallel with 28th Street, 37.5 feet; thence Southwardly, along the East side of Fawn Street, 100 feet to the point of beginning.

This Property is commonly known as 730 E 28th Street, Norfolk VA 23504.

The source of funds for the payment of \$2,986.58 is the reserved payments Debtor retained pending resolution of this Motion for the April and May 2013 payments. As to the funding for the amended plan [which will require approximately \$100.00 per month], Debtors grandson and

granddaughter have relocated and moved in with their parents as of February 2013, thereby reducing food expenses and miscellaneous expenses sufficient to fund remaining 50 months of current plan.

It is further **ORDERED** that in such an event (a) thirty (30) days after termination of the automatic stay, the Trustee will cease making any payments on the Movant's secured claim which were required by the Plan, (b) within one hundred twenty (120) days after termination of the stay, the Movant, its successors or assigns must file an amended unsecured claim for a deficiency or such claim shall be forever barred and the amended claim for any deficiency balance shall include an explanation of the calculation of the deficiency amount as required by Va. Code §8.9A-616, and (c) if Movant, its successors or assigns, shall thereafter complete a foreclosure of the lien of its deed of trust, the Movant, its successors or assigns, or their counsel, shall promptly notify the Chapter 13 Trustee in writing of the results of any foreclosure of the subject deed and pay to the Chapter 13 Trustee any excess funds received from foreclosure sale, to be disbursed upon agreement with Debtor or upon further order of the Court.

It is further **ORDERED** that in the first paragraph of the amended plan, in the space provided therefore, the amended plan shall clearly set forth that the plan is being amended to include payment of post-petition mortgage arrearages and that general unsecured creditors may be affected by the modification. Consent by the Trustee to the proposed terms of this order does not constitute consent to the terms of any future amended plan, including the one contemplated herein, including, but not limited to the terms which propose to shorten the duration of the plan, lessen the amount of the plan payments, or decrease the plan base of the existing plan.

It is further **ORDERED** that the Automatic Stay of 11 U.S.C. Section 362 (a) shall not be reimposed as to Debtors' interest by the conversion of this case to any other case under the Bankruptcy Code.

It is further **ORDERED** that Rule 4001(a)(3) is not applicable and Movant may immediately implement and enforce this order.

Date: May 22 2013

/s/ Frank J. Santoro

U.S. Bankruptcy Judge

Entered on Docket: 5/22/2013

I ASK FOR THIS:

/s/ Steve C. Taylor
Steve C. Taylor, Esquire
Counsel for Debtors
133 Mt. Pleasant Road
Chesapeake, Virginia 23322
(757) 482-5705

SEEN AND AGREED:

/s/ Julian A. Bryant, Jr.
Julian A. Bryant, Jr. (VSB #1168)
Counsel for Movant
2101 Parks Avenue, Suite 301
Virginia Beach, Virginia 23451-4183
(757) 437-9500

SEEN and NO OBJECTION:

/s/ Michael P. Cotter
Michael P. Cotter, Trustee
870 Greenbrier Circle, Suite 402
Chesapeake, Virginia 23320
(757) 961-3000

Local Rule 9022-1(C) Certification

The foregoing Order was endorsed by and/or served upon all necessary parties pursuant to Local Rule 9022-1(C).

/s/ Julian A. Bryant, Jr.
Julian A. Bryant, Jr.

Julian A. Bryant, Jr. (VSB #1168)
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PARTIES TO RECEIVE COPIES:

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